

BOROUGH OF AVALON
CAPE MAY COUNTY
NEW JERSEY

ORDINANCE No. 871–2024

AN ORDINANCE AMENDING AND SUPPLEMENTING CHAPTER 1 OF THE AVALON BOROUGH CODE (GENERAL PROVISIONS) TO CREATE AN ADMINISTRATIVE APPEALS TRIBUNAL.

WHEREAS, the Borough has determined that it is in the public interest to create an Appeals Tribunal so that any person or entity aggrieved by an administrative decision, except as otherwise provided, will have available a mechanism to review such decision in accordance with due process; and

NOW, THEREFORE, BE IT ORDAINED BY THE BOROUGH COUNCIL, the Governing Body of the Borough of Avalon, in the County of Cape May and State of New Jersey as follows:

SECTION 1. Chapter 1 of the Code of the Borough of Avalon (General Provisions) is amended and supplemented to add a new subsection as follows:

New section to be added:

§ 1- 8 ADMINISTRATIVE APPEALS

§ 1- 8.1 APPEALS OF ADMINISTRATIVE DECISIONS; EXCEPTION

- A. Unless a specific method of appeal is established by statute, ordinance, contract, the Borough's Polices and Procedures Manual, or collective negotiations agreement, any administrative decision may be appealed as herein provided.
- B. There is hereby created a Borough Appeals Tribunal which shall consist of not less than three (3) members consisting of the following:
 - The Business Administrator or designee;
 - An attorney who is appointed as Special Counsel pursuant to Resolution of the Borough Counsel. In the event that more than one Special Counsel has been appointed, the appointee to serve shall be designated by the Mayor.
 - Director of Revenue and Finance or designee;
- C. If the appeal concerns a decision of a member of the Appeals Tribunal, such member shall not participate in the appeal and such member shall be replaced by (1) the Mayor or his designee. Other members comprising the Tribunal shall remain unchanged. In the event of other recusals (i.e., due to a conflict of interest – actual or perceived) from a particular appeal, the substituted members shall be in the following order: (1) the Zoning Official or (2) Human Resource Officer.

The non-participating member(s), while not participating in the appeal decision process, shall be afforded the right to offer testimony and/or produce documents bearing on the issues on appeal.

The membership of the Appeals Tribunal may be changed by Resolution of the Borough Council upon the recommendation of the Mayor or on the initiative of Borough Council.

The Borough Solicitor shall attend the appeal hearing and provide legal advice and guidance to the Appeals Tribunal. Such hearing shall be recorded.

- D. **EXCEPTION:** Since specific provisions and procedures for appeal currently exist for certain matters, this section shall not apply to any of the following:
 - 1) personnel matter(s) including promotions, demotions, dismissal from employment, employee discipline, assignment, grievances, and other similar issues related to or affecting the terms and conditions of an employee's employment. All such matters shall be determined in accordance with the Borough Employee Personnel Handbook, any controlling collective negotiations agreement, or as provided by law.

- 2) any decision of the Construction Official or Subcode Officials under the New Jersey Uniform Construction Code;
- 3) any decision under the New Jersey Uniform Fire Code;
- 4) any decision of the Floodplain Administrator;
- 5) any decision of the Zoning Official or Zoning Enforcement Officer; or
- 6) any decision of the Code Enforcement Official or Officers;
- 7) any decision of the Borough Council whether legislative in nature or otherwise;
- 8) any other matter in which an appeal process is established by State Statute or municipal ordinance, or by rule or regulations of the State of New Jersey or the United States or any agency thereof, or in which jurisdiction for hearing and deciding appeals is vested by law in a specific agency or tribunal.

E. PROCEDURE:

- 1) The procedure shall begin by the person aggrieved by an Administrative Decision filing a letter of appeal with the Borough Clerk within ten (10) business days following the event complained about. Such letter must state the specific reasons or grounds for the appeal and shall provide any supporting documents upon which the appellant intends to rely. Upon receipt of such an appeal, the Borough Clerk shall forward a copy of the letter of appeal (without supporting documents) to the members of the Appeals Tribunal. The Business Administrator or designee shall then convene a meeting of the Appeal Tribunal which shall convene initially within ten (10) business days following notification from the Borough Clerk.
- 2) Once the meeting date is established, the Borough Clerk shall then forward to the members of the Tribunal any supporting documents filed in support of the appeal.
- 3) The appellant shall have notice of the meeting date and shall have the right to attend and testify and present witnesses. The appellant may also be represented by an attorney.
- 4) The Appeals Tribunal shall render its final decision in the appeal within twenty (20) days following the conclusion of the appeal hearing.
- 5) Time limits may be extended by mutual consent of the parties or due to extenuating circumstances beyond either party's control.

F. FURTHER APPEAL

- 1) If dissatisfied with the decision of the Appeals Tribunal, the appellant or other aggrieved party may appeal the decision to the Borough Council by filing a notice of appeal with the Borough Clerk within 30 days following the decision of the Appeals Tribunal.
- 2) Such notice must be in writing, specify the reasons and grounds for such appeal. Upon the filing of such an appeal the Borough Council may choose one of the following:
 - a) Refer the matter to a Hearing Officer who shall conduct a hearing substantially following the procedure for administrative hearings in New Jersey. The Hearing Officer shall then submit his/her findings and conclusions with 15 business days after the close of the Hearing. Borough Council may then accept, reject, or modify the decision of the Hearing Officer based on the record developed before the Hearing Officer; OR
 - b) Borough Council may select an ad hoc committee of its membership to hear and decide the appeal; OR

- c) Borough Council may, in its discretion, decide to have the full Council decide the matter.
- d) Following the exhaustion of such administrative remedies, any aggrieved person or entity may pursue a further appeal to a Court of competent jurisdiction subject to the Rules of such Court.

SECTION 2. REPEALER. All Ordinances or parts of Ordinances, including those specified in Section 3 hereof, which are in conflict or inconsistent herewith are hereby repealed to the extent of such inconsistency or conflict only.

SECTION 3. SEVERABILITY. If any section, paragraph, subdivision, subsection, clause, or provision of this Ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, subsection, clause, or provision declared invalid and the remainder of this Ordinance shall remain in full force and effect and shall be enforceable.

SECTION 4. EFFECTIVE DATE. This Ordinance shall take effect immediately upon final adoption and publication as required by law.

NOTICE OF PENDING ORDINANCE

The Ordinance published herewith was introduced and passed on first reading of the Municipal Council of the Borough of Avalon on January 24, 2024. It will be further considered for second reading, public hearing and final adoption at a meeting of said Council to be held on the 28th day of February, 2024 in the Meeting Room of the Municipal Building, Avalon, New Jersey at 4:00 p.m. and during the week prior to and up to and including the date of such meeting, copies of said Ordinance will be made available at the Clerk's Office in said Municipal Building to the members of the general public who shall request the same.

C. DANIELLE NOLLETT
Borough Clerk